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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,895	02/13/2006	Jurgen Damm	18064	6365

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CNH AMERICA LLC
INTELLECTUAL PROPERTY LAW DEPARTMENT
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EXAMINER

MITCHELL, JOEL F

ART UNIT	PAPER NUMBER
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3671

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,895	Applicant(s) DAMM ET AL.	
	Examiner Joel F. Mitchell	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wykhuis et al. (US 4,580,811) in view of Schultz (US 4,664,404).**

3. With respect to claim 1, Wykhuis discloses a vehicle (10) having a rear frame including left (14) and right (12) longitudinal beams, each having a rear end, and providing for the components or subassemblies of a rear counterweight, lights and a bumper, the improvement comprising:

the bumper and the rear counterweight are comprised of a generally flat elongate rear end plate (30) having opposing outer end regions and extending across the entire width of the grader (Fig. 1);

the rear end plate capable of a greater wall thickness (addition of weights 52 and removal of spacers 48 leading to a greater wall thickness);

the rear end plate viewed in the direction of travel of the grader constitutes the rearmost part of the rear frame (seen in Fig. 2); and

tail lights are built into openings (col. 1, lines 65-68) in the rear end plate positioned in the outer end regions (Fig. 1).

4. Wykhuis does not explicitly disclose a road grader. Wykhuis discloses a rear counterweight assembly for a vehicle. This vehicle frame appears similar to that of road graders and is capable of being a road grader. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the assembly of Wykhuis on a road grader. The motivation being "to provide a counterweight assembly which does not hinder the function of the vehicle nor disturb the styling lines thereof." (col. 1, lines 26-28)

5. Wykhuis does not explicitly disclose differing wall thicknesses corresponding to the presence of rear-mounted equipment. Schultz discloses that rear axles can become overloaded when the rear portion supports a hitch assembly, an implement, and when rear ballast is provided (col. 1, lines 26-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a lighter configuration of Wykhuis, and hence a thinner one, when using the counterweight with rear-mounted equipment in order to prevent overloading. Additionally, Schultz discloses rear end plates (51) mounted directly above an attachable (via 61) piece of equipment. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Wykhuis with the weight and attachment configuration as taught by Schultz in order to decrease the possibility of interference between the counterweight and attachment means (Schultz, col. 1, lines 53-55). Wykhuis and Schultz are analogous because they both disclose rear counterweights for vehicles.

6. With respect to claim 2, Wykhuis discloses the assembly regarding claim 1, above. The Examiner takes official notice that it is old and well known in the art to form objects, which were previously of more than one piece, as only a single piece. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the rear end plate (30) as one piece in order to eliminate the need for assembly.

7. With respect to claims 3 and 5, Wykhuis discloses the assembly wherein the rear ends of the left longitudinal beam (14) and the right longitudinal beam (12) are joined to a rear transverse beam (16).

8. With respect to claim 4, Wykhuis discloses the assembly wherein the rear end plate (30) is removably attached (via 38, 42, 46, 50; shown exploded and detached in Fig. 1) to the rear transverse beam (16) and constituting the rearmost part of the rear frame (Fig. 1). Wykhuis discloses a rear counterweight assembly wherein the rear end plate has opposing outer end portions and openings through the outer end portions and taillights are fitted therein (col. 1, lines 65-68) such that the lights do not extend beyond the end of the frame (Figs. 1, 2).

9. Wykhuis does not explicitly disclose backup/brake and flasher lights. Wykhuis discloses the assembly housing "a pair of taillights having lenses 32." (col. 1, line 66) The Examiner takes official notice that backup/brake and flasher lights being built into a bumper assembly is well known in the vehicle art. It would have been obvious to one of

ordinary skill in the art at the time of the invention to provide the assembly of Wykhuis with backup/brake and flasher lights in order to signal braking and turning.

10. With respect to claim 14, it would be inherent to provide and use rear end plate as disclosed by Wykhuis and Schultz, above, with regard to claims 1-5.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luttrell (US 3,853,231) in view of Schultz.

12. With respect to claim 8, Luttrell discloses a road grader (10) comprising:

a wheel-supported main frame (16) having a front end and an opposing rear end (18) as determined by the normal direction of travel, the main frame comprised of joined front and rear frames (shown as articulated in Fig. 1);

an engine (14) and a driver's cab (seen in Fig. 1) supported on said main frame;

a vertically adjustable ground-engaging blade (at 12) supported by said main frame;

the rear frame (18) having left (20) and right (22) longitudinal beams generally parallel and in the general same horizontal plane (seen in Fig. 2), each with a rear end;

a generally flat elongate first rear end plate (48) jointed (via 24) to the rear end of each of the right and left longitudinal beams;

the first rear end plate constituting the rearmost part of the rear frame (seen in Fig. 1) and extending generally the width of the road grader (seen in Fig. 2); and

the first rear end plate having openings (apertures of col. 3, lines 59-61) therethrough to accommodate the attachment of rear-mounted equipment.

13. Luttrell does not explicitly disclose recesses to allow rear-mounted equipment to pass from a position below the plate through a lower portion of the rear end plate.

Schultz discloses rear end plates (51) having recesses (53) along a bottom edge to avoid interference with a control cylinder (52) associated with an implement attached to the rear. Additionally, Schultz discloses rear end plates (51) mounted directly above an attachable (via 61) piece of equipment. Luttrell and Schultz are analogous because they both disclose rear counterweights for vehicles. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Luttrell with the weight and attachment configuration as taught by Schultz in order to decrease the possibility of interference between the counterweight and attachment means (Schultz, col. 1, lines 53-55).

14. With respect to claim 9, Luttrell discloses the road grader above. The Examiner takes official notice that it is old and well known in the art to form objects, which were previously of more than one piece, as only a single piece. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the rear end plate (48) as one piece in order to eliminate the need for assembly.

15. Claims 10, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luttrell in view of Schultz as applied to claim 8 above, and further in view of Wykhuis.

16. With respect to claim 10, Luttrell discloses the road grader wherein the rear ends of the left longitudinal beam (20) and the right longitudinal beam (22) are joined to a rear transverse beam (24). Luttrell discloses a second rear end plate (35). Neither Luttrell nor Schultz explicitly discloses attaching the second rear end plate in place of the first rear end plate.

17. Wykhuis discloses a vehicle (10), the improvement comprising a first rear end plate (30) and a second rear end plate (including 52) removably attachable to the rear transverse beam wherein the second rear end plate is attached to the rear transverse beam in place of the first rear end plate (Figs. 1, 2).

18. Luttrell, Schultz, and Wykhuis are analogous because they all disclose rear counterweight assemblies for vehicles. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the road grader of Luttrell and Schultz with the rear plate configurations as taught by Wykhuis in order to simplify the production and storage of rear plates by sizing them similarly.

19. With respect to claim 11, Luttrell and Schultz do not disclose openings for lights in the rear plate. Wykhuis discloses a rear counterweight assembly wherein the rear

end plate has opposing outer end portions and openings through the outer end portions and taillights are fitted therein (col. 1, lines 65-68).

20. Wykhuis does not explicitly disclose backup/brake and flasher lights. Wykhuis discloses the assembly housing "a pair of taillights having lenses 32." (col. 1, line 66) The Examiner takes official notice that backup/brake and flasher lights being built into a bumper assembly is well known in the vehicle art. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Wykhuis with backup/brake and flasher lights in order to signal braking and turning.

21. Luttrell, Schultz, and Wykhuis are analogous because they all disclose rear counterweight assemblies for vehicles. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the road grader of Luttrell and Schultz with the rear lighting capabilities as taught by Wykhuis in order to signal braking and turning, as well as to provide a convenient location for electrical connections to rear-mounted equipment.

22. With respect to claim 13, Luttrell does not explicitly disclose differing wall thicknesses corresponding to the presence of rear-mounted equipment. Wykhuis discloses increasing the wall thickness through the addition of weights (52). Schultz discloses that rear axles can become overloaded when the rear portion supports a hitch assembly, an implement, and when rear ballast is provided (col. 1, lines 26-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a lighter configuration of the rear end plate, and hence a thinner

one, when using the counterweight with rear-mounted equipment in order to prevent overloading by generally maintaining a consistent axle load distribution.

23. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luttrell in view of Schultz in view of Wykhuis as applied to claim 11 above, and further in view of Latterman (US 3,490,787).

24. Luttrell, Schultz, and Wykhuis disclose the road grader with regard to claims 8 and 11. They do not explicitly disclose the rear end plate being made of steel.

Latterman discloses a tractor bumper and counterweight assembly wherein the end plate (7, as well as associated members 2 and 11) are made of heavy steel (col. 2, lines 18-24).

25. Luttrell, Schultz, Wykhuis, and Latterman are analogous because they all disclose counterweight assemblies for vehicles. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the road grader disclosed by Luttrell, Schultz, and Wykhuis with a steel rear end plate as taught by Latterman. The motivation being to have the plate withstand normal wear as well as wear encountered in using the plate as a bumper for pushing other vehicles or implements (Latterman, col. 2, lines 18-22).

Response to Arguments

26. Applicant's arguments filed 6/18/2009 have been fully considered but they are not persuasive.

27. In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

28. Applicant appears to be directing claimed matter towards a system, but a system is not claimed.

29. Regarding claim 4, the material of the rear plates is not claimed.

30. Applicant's arguments with respect to claim 10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joel F. Mitchell whose telephone number is (571)272-7689. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/

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Supervisory Patent Examiner
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JFM
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